

CITY OF MUSKEGON  
ZONING BOARD OF APPEALS  
REGULAR MEETING  
MINUTES

August 10, 2004

Chairman S. Schiller called the meeting to order at 4:03 p.m., and roll was taken.

MEMBERS PRESENT: C. Kufta, S. Schiller, R. Hilt, E. Fordham, J. Clingman-Scott, R. Schweifler, B. Larson

MEMBERS ABSENT: None

STAFF PRESENT: J. Kinney, M. Cameron, C. Brubaker-Clarke, H. Griffith

OTHERS PRESENT: D. Boes, 1903 Marquette; P. Schultz, Woodland Realty; B. Thomas, 1790 Beach; R. Kozal, President of St. Vincent De Paul Society; J. Bass, 380 Catawba; K. LaLonde, 1705 McGraft; J. Berg, Contractor; D. Bowen, Contractor; G. Bomers, 1152 Fleming.

APPROVAL OF MINUTES

A motion to approve the minutes of the regular meeting of July 13, 2004, was made by R. Hilt, supported by B. Larson and unanimously approved.

PUBLIC HEARINGS

Hearing, Case 2004-26: Variance request to allow a six foot privacy fence in front of the front building line on a corner lot at 1105 Fleming by Mark Cryderman. J. Kinney presented the staff report. This case was the result of an enforcement action. The applicant erected a fence without a permit. The Zoning Inspector sent a letter in May explaining that the fence was too tall along the alley past the front building line of the principle structure. The applicant then applied for a permit for the fence, which was denied. The applicant has since applied for this variance to allow a permit to be issued and the fence to remain. The applicant has constructed a 6-foot fence (photos were provided to the commission members). The fence was placed along the south property frontage facing the alley and proposes to extend the 6' fence along the Oakgrove frontage north from the alley for an unknown distance. The Zoning Ordinance defines a 'front' yard as being any yard, which abuts a street. Therefore, corner lots are considered to have two 'front' yards since they have two street frontages. The ordinance does not permit 6-foot privacy fences in front yards. A privacy fence can only be up to 3 feet in front yards. Fence may be 6-feet high when constructed in line with the home. The applicant has stated that they need the fence because they have a pool and the fence will provide privacy and security to keep children from entering the pool. Staff has received five comments regarding this case. 1) Mr. Floyd DeForest who stated he is in favor of the request if it is for the fence as it is currently



constructed. 2) The second comment was anonymous, the caller stated, "I have no problem with the existing fencing but I do not want any further fence of this type near the intersection because vision might be impaired". 3) The third comment was also anonymous with the caller stating "I believe you can do what you can do". 4) The fourth comment was from Molly Vanderlip, a new homeowner in the area, she is not opposed to the fence. 5) A lady who left no name or address (but said she lived a few houses away) has a problem with the request. There are a lot of children in this neighborhood. She has a problem with the fence being that close to the corner. This makes it hard to see the children that may be playing in that area. She was opposed to the request.

J. Clingman-Scott asked what the building codes were in regards to closing off a pool. M. Cameron stated that building code requires that the fence be made of a non-climbable material and at least 4-ft. tall. R. Schweifler asked what would constitute a non-climbable fence. M. Cameron stated that the building inspector would determine it, but a chain link fence has been allowed. G. Bomers stated that the fence looks like a wall and had some concerns if the fence were going to be placed to the corner. S. Schiller stated that according to the supplied information, the fence wouldn't be to the corner. G. Bomers stated that he would have no problem then. The commission members had further questions, but the applicant wasn't in attendance at the meeting.

A motion to close the public hearing was made by R. Hilt, supported by R. Schweifler and unanimously approved.

E. Fordham asked if the portion of the fencing along the alley was okay. S. Schiller stated that part of it was and explained which portion wasn't. J. Clingman-Scott asked if the chain link fence connects to the house. J. Kinney stated that it did. R. Schweifler stated that the pool would be enclosed with the proposed fence. S. Schiller stated that he had gone by the home and there is a fence that is around the pool already. J. Kinney explained that the fence located around the pool appeared to be built according to building code requirements.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow a 6-foot fence in front of the front building line, as shown on the proposed site plan at 1105 Fleming Ave., be denied, based on the findings of fact not being proven, was made by C. Kufta, supported by J. Clingman-Scott, with a second motion being made.

R. Schweifler felt the request should be tabled to give the applicant a chance to attend the meeting and answer any questions the commission members have. He was concerned the applicant may not have realized he should be at the meeting due to the changes in staffing. S. Schiller stated that that wouldn't matter. The applicants should be at the meetings in case there are questions. H. Griffith stated that B. Lazor was available thru the application process and would have informed the applicant that he should be at the meeting. She also stated that she had mailed a copy of the agenda and the staff report regarding the case to the applicant.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow a 6-foot fence in front of the front building line, as shown on the



proposed site plan at 1105 Fleming Ave., be tabled until the applicant is present for clarification, was made by R. Schweifler, supported by B. Larson and failed with C. Kufta, S. Schiller, R. Hilt, E. Fordham, and J. Clingman-Scott voting nay.

R. Schweifler felt that he couldn't deny the request because he felt that a compromise could be made. R. Hilt stated that this was a result of an enforcement action. He felt that it should be denied. C. Kufta felt that the findings of fact weren't proven. J. Clingman-Scott felt that the commission members should proceed with the request.

A motion by the Zoning Board of Appeals that the variance to allow a 6-foot fence in front of the front building line, as shown on the proposed site plan at 1105 Fleming Ave., be denied, based on the findings of fact not being proven, was made by C. Kufta, supported by J. Clingman-Scott and approved with R. Schweifler and B. Larson voting nay.

Hearing, Case 2004-27: Variance request to allow a 73.5 square foot entrance sign at 1903 Marquette, by David Boes (Baker College). J. Kinney presented the staff report. The subject property didn't suffer from sign clutter on the site and the site signage was mainly directional in nature. The property has one existing freestanding sign on the Marquette frontage for the culinary school and one additional monument sign. The adjacent college campus was granted a variance for the number of freestanding signs in 2001 under language of the ordinance before the introduction of the Campus Signage revisions. Staff realized that campuses are unique and have special signage needs, the ordinance has been amended adding campus language in an attempt to reasonably accommodate those needs. Staff has not received any comments regarding this case.

D. Boes explained the intention of this request was so they could try to get the traffic off Apple Ave. and have it go down Marquette. They would be removing the old sign and place the new sign at the entrance. He showed the commission members which sign would be removed according to the pictures that were supplied to them. He stated that the sign being removed was approximately 42 sq. ft. and the MCC sign was larger than what Baker proposed.

A motion to close the public hearing was made by R. Hilt, supported by R. Schweifler and unanimously approved.

B. Larson felt that the request should be approved. MCC was allowed their variance and Baker College has had significant growth. He would be in support of the variance.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because they need to have a proper size sign to identify where the new campus entrance is off of Marquette Avenue. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because their neighbor (MCC) already has a variance for this same type of signage. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the neighbor has received a variance for the same type of sign already. The alleged



difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property or by any previous owner because the ordinance is confusing. One place says a large sign is ok. The "Campus" section says only 32-sq. ft. is allowed which is too small for their new entryway. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because they want students, visitors, and guests to be able to see their new entrance on Marquette Avenue. The requested variance is the minimum action required to eliminate the difficulty because the neighbor already has the same variance.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow a 73.5 square foot entrance sign be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void, was made by B. Larson, supported by R. Hilt and unanimously approved.

Hearing, Case 2004-28: Variance request to reduce the rear setback (opposite Creston) to 2 feet and the adjacent setback to 2 feet for a proposed property split and future development at 1785 Creston property, by Laketon East LLC and L&P Laketon LLC. J. Kinney presented the staff report. This property currently has a structure (Hot & Now) located on the easterly portion of the property that has frontage along Creston Street. The property also has an easement across the former railroad property to Laketon Ave. but no actual frontage on Laketon Ave. The request for the reduction in the required rear setback if approved would allow a proposed property split to proceed for a future development on the split parcel and would eliminate the required rear property line landscape buffer at Hot & Now. As proposed on the site plan the new parcel, after the proposed split, would require more than the reduction in setback to 2 feet to allow for the construction of the parking lot to supplement parking for 1360 E. Laketon Ave. The applicant states that the adjacent 50,000 square foot building at 1360 E. Laketon "requires more land based on city - zoning building to land use ratio for most adaptive uses". The proposed parking lot does not meet the requirements of Section 2326 and until a use is proposed the required number of spaces cannot be calculated. The additional property would still be zoned B-2, which does not allow parking as a principal use. Further, the future land use map of the 1997 Master Land Use Map designates 1360 E. Laketon and the adjacent property as commercial, whereas they are currently I-1. Staff has not received any comments regarding this case.

C. Kufta asked if there could be 4 ft. between two buildings if there were 2 ft. setbacks for each property, based on the wording of the request. J. Kinney stated there could be. P. Schultz stated that this is an effort to facilitate commercial use of 1360 E. Laketon and that industrial wouldn't be the highest and best use for the property. When the original site plan for Hot 'N Now was brought in, it was approved by the Planning Commission about 10 years ago. He stated that they have been in discussions with a few people about some uses that could possibly locate there. He stated that even if this is approved, once a suitable use is decided, it would still need to go back for another variance for the building to land ratio. He suggested adding a condition that the setback would only be allowed for parking and not for any structures. B. Larson asked if there was an adaptive reuse for the building. P. Schultz stated that there was. He gave examples of adaptive uses for the building such as an indoor fleamarket.



A motion to close the public hearing was made by B. Larson, supported by R. Hilt and unanimously approved.

R. Schweifler felt that the setback should only be allowed for parking. J. Clingman-Scott asked about landscaping. S. Schiller stated that they would have to landscape the area. J. Kinney confirmed that landscaping would be required for any site plan.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because it has a 50,000 sq. ft. building that requires more land based on the City Zoning Ordinance in regards to the building to land ratio for most adaptive uses. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because the building to land ratio doesn't meet current City code. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the variance will bring the address into compliance with the City code and improve public safety. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the ordinance doesn't take into account the changes in market uses and City Codes. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because most industrial, warehouse, or commercial uses for this property doesn't have enough building to land capacity. The requested variance is the minimum action required to eliminate the difficulty because if this were to go by the current zoning ordinance language, then there would be a need to reduce the parking spaces depending on the proposed use.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow the reduction of the rear setback to 2 feet for 1785 Creston and 2 feet setback on the opposite side of the property line at 1360 E. Laketon, be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void. 3) The 2 ft. setback would only be for parking and not any structures, was made by B. Larson, supported by R. Hilt and unanimously approved.

Hearing, Case 2004-29: Variance request to allow a 20 foot tall garage to be built in front of the front building line and to reduce the front setback to 1 foot at 1790 Beach Street, by Bernadette Thomas. Staff has received the following comments regarding this case: Barbara Fried e-mailed with the following comments: "In regards to the garage at 1790 Beach, I am in favor of the resident building one since he/she has no other alternative as to a place to park a car, without having the sand keep infringing on the parking space. Barbara Fried, property owner within 300 feet of proposed garage". Mark and Kym Molitor e-mailed supporting the project with this comment: "We received the letter with regards to the above case but cannot attend the meeting on August 10<sup>th</sup>. We are writing again in support of allowing the garage to be built. We are the adjacent neighbors, residing at 1786 Beach, and probably the ones most affected by the decision. We believe the addition of a garage would help improve the neighborhood. Bob & Judy Shatney



of 1792 Beach e-mailed stating that they are very much in favor of the proposed garage. They didn't understand why the applicant was turned down the first time they requested a permit. They felt that the City makes it hard for an individual to improve their property. This would be another step to improve the looks of Beach St. S. Schiller asked what was changed from the original request. B. Thomas explained that the original proposed garage was 22 ft. wide, which would require a zero setback from the property line. The garage that is now proposed would be 18 ft. wide. This would allow for a 3-ft. setback and it would also be 1 foot from the sidewalk. J. Clingman-Scott asked about the height. B. Thomas stated that the zoning ordinance states that it would need to be 14 ft. measured from the median. She would need it to be taller as she is looking at having a boardwalk from the garage to the deck of the home. C. Kufta asked what the depth of the garage would be. B. Thomas stated that it would be 28 ft., which is the same as before. C. Kufta asked if the proposed garage was taller than the original request. B. Thomas stated that it was. R. Hilt asked if there would be any living quarters above the garage. B. Thomas stated there wouldn't. C. Kufta felt that fundamentally, this was the same request. B. Larson disagreed. He stated that from the previous meeting, the biggest portion of the discussion was in regards to the zero lot line. He felt that this was a valid request as the applicant has addressed the previous concerns. S. Schiller asked M. Cameron if he felt that this request had enough changes to merit rehearing it. M. Cameron stated that based on conversations with the previous Zoning Administrator, he would support the decision. The commission decided to rehear the case and S. Schiller stated that no staff report was needed.

B. Thomas provided a site drawing showing what the proposed garage would look like. The garage would be smaller than what is in the drawing. C. Kufta asked if they would need approval to excavate and build from the DEQ. B. Thomas stated that she has an application into the DEQ right now. There wouldn't be a lot of excavating, as they will be building the garage using the existing concrete slab that was left from the previous garage. J. Clingman-Scott asked what the elevation was from the street to the first floor of the home. B. Thomas stated that she didn't know. M. Cameron stated that it was approximately 12 to 14 ft.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because the home location is part way up the dune with parking at street level. A narrow width of lot with a designation as "critical dune" all contribute to the extraordinary circumstances. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because the vast majority (if not all) residents of Beach Street have garages with a convenient access to the house. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because the ingress/egress of the neighbors views of the lake will not be affected. The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the construction of the garage next to the home is impossible due to the dune. The front setback cannot be kept because of the dune. The height limitation cannot be adhered to if the plan for efficient access to the house is built as planned. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because



this is their permanent home and there had always been a garage that was partially located on the neighboring property. They would like to rebuild it and have it on their property. The requested variance is the minimum action required to eliminate the difficulty because this is the minimal action that will result in a practical, serviceable garage for a year round resident.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to reduce the front setback to 1 foot and allow a 20 foot tall garage to be built in front of the front building line of the principal structure at 1790 Beach St., be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void. 3) Pending DEQ approval. 4) The proposed garage doesn't have any living quarters above it. 5) The height will be limited to 20 ft. measured to the roof peak, was made by R. Schweifler, supported by B. Larson and unanimously approved.

The meeting was moved to conference room 103 at 5:15 p.m.

Hearing, Case 2004-30: Use Variance request to allow a thrift store (retail and storage) to operate in an I-1, Light Industrial district at 1338 Wood, by Ronald J. Kozal (St. Vincent De Paul Society INC). J. Kinney presented the staff report. The previous use of this property was a wholesale plumbing supplies business with warehousing of associated parts and supplies. A small showroom was located in the front portion of the main building to display various plumbing fixtures to their clients. Staff had a fax from Ferguson stating that P. Schultz would be representing them.

J. Clingman-Scott asked what the zoning was on the opposite side of the street. J. Kinney stated it was residential. J. Clingman-Scott asked if the entrance was on the Wood St. side. J. Kinney stated that it was. P. Schultz explained that the proposed use would be compatible with what was originally there, it would just be a different product. R. Hilt stated that the building is in disrepair and asked if the applicant would be upgrading the building. R. Kozal stated that they would be repairing the building. They are also looking at tarring the parking lot. S. Schiller asked how this use compared with Goodwill. R. Kozal stated that Goodwill doesn't give things away and St. Vincent's does. They work with different agencies thru a voucher system. They would have clothing, furniture, etc. They are also looking to have a food pantry at the location in the future. C. Kufta wondered if a variance would be necessary as there would be a minimum amount of retail and there would be refurbishing products as well as repackaging. J. Clingman-Scott asked what the projected volume of business they would have. R. Kozal stated that they would probably start out by hiring about 12 people in the beginning. They are looking at a projection of about \$500 a day in the beginning and hopefully more as time proceeds. They also have a site in Grand Rapids that is making more than that. J. Kinney added that the wording for the industrial zoning district was that it would have to be wholesale and not retail, which this is. C. Kufta still had some concerns that it may not need a variance. P. Schultz explained that it would need a variance no matter which way the property was zoned.

B. Larson left at 5:27 p.m.

J. Clingman-Scott had some concerns as to whether or not the number of customers would have



an impact on the neighborhood. R. Schweifler stated the houses located across the street from this address don't face Wood St. and have a buffer between them and Wood St. R. Hilt felt that this was a good adaptive use for the property. J. Bass asked if there would be items stacked outside. R. Kozal stated that everything would be done inside. The dumpsters would also be located inside the building. J. Bass stated that he would have no problem with the request as long as it's not an eyesore.

A motion to close the public hearing was made by R. Hilt, supported by R. Schweifler and unanimously approved.

A motion determined by the Zoning Board of Appeals, that the use meets the ordinance requirements under the current zoning district and doesn't need a variance as long as only 25% of the main building is maintained as retail for St. Vincent's products with the rest processing, was made by C. Kufta, supported by R. Hilt and unanimously approved.

Hearing, Case 2004-31: Variance request to reduce the minimum house size requirement to allow an 872 square foot home to be built on a 4,405 square foot (non conforming) property with a reduced side setback of 3'6" and a reduced rear setback of 11' 6" at 1705 McGraft, by Steve and Karen Lalonde. J. Kinney presented the staff report. Home was damaged by more than 50 percent of its replacement value. The current lot and structure are nonconforming in size and setbacks. Property currently has a For Sale sign displayed. Current residential design requirements require a minimum square footage of 960 square feet for a one-bedroom home with an additional 100 square feet for each additional bedroom. Current required setbacks for a 1-½ story home in an R-1 district are a minimum of 6 feet on one side and a total of both side setbacks of 16 feet. Rear setbacks are 30 feet. Homes built in existing neighborhoods can align with existing homes. Staff received the following comments: 1) Janelle Peterson of 1733 McGraft Street, is in favor of the request and feels they should be able to rebuild the home. 2) An e-mail from Brett & Hilary Joslin of 1337 Montgomery, who are in favor of the request. 3) Tom Balas, 1721 Ruddiman, who also has no problem with the request.

E. Fordham asked what defined a 1 ½ story. J. Kinney explained it based on the zoning ordinance language. M. Cameron explained the reasoning for the ½ story allowance. J. Clingman-Scott asked if there were any plans for the home to be built. J. Kinney stated that the applicant would use the existing foundation. K. LaLonde stated that they would like to add 2 blocks to the basement (existing foundation), with the rest of the home looking like what was originally there. D. Bowen stated that the outside of the home would look the same. E. Fordham asked about the front porch that had been there. He asked if there was any plan to try to heat it and utilize it as some living space. K. LaLonde stated that it did have heating. She would like to have better windows than what was there so the heat won't escape. J. Berg had a sketch to give the commission members and idea of the layout that had been there. The basement would be finished with egress windows. C. Kufta stated that this is a unique situation. He didn't feel that the applicant should be asked to do anything other than rebuild what was there. R. Schweifler felt that the applicant should be allowed to rebuild in the same footprint and in keeping in the scope of the neighboring homes. He felt the variance should be granted as long as building codes are met.



A motion to close the public hearing was made by C. Kufta, supported by R. Hilt and unanimously approved.

E. Fordham suggested adding a condition that the home could be restored to what is supported by the neighborhood.

The following findings of fact were offered: There are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district because a tree older than 100 years fell on the home and destroyed it after a windy storm. They would like to rebuild what was there. The dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity because instead of an empty lot, there would be a nice, new home and still keep with the architecture of the neighboring properties. This would also increase the property values of the surrounding neighbors. Authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest because they would rebuild on the same foundation (which wasn't destroyed). The alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner because the zoning laws don't take into consideration acts of God in order to rebuild on the same foundation of what was there, eventhough, the lot is considered unbuildable according to the zoning ordinance. The alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner because there is an expense to building what was there originally. The applicant still wants to live at the location. The requested variance is the minimum action required to eliminate the difficulty because this is their only option in order to rebuild on their property.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance to allow an 872 square foot home to be rebuilt on a non-conforming lot with reduced setbacks of 3 feet 6 inches on the side and a reduced rear setback of 11 feet 6 inches at 1705 McGraft, be approved, based on the findings of fact, with the following conditions: 1) The variance is recorded with the deed to keep record of it in the future. 2) That the addition to the property must be complete within one year or the variance is void. 3) The house will be built to keep the uniformity of the neighborhood, with respect to height and exterior design.

#### OTHER

Anonymous Phone Calls – The commission members discussed the anonymous phone calls. They felt if someone had an opinion about a case, they should be able to leave their name or address to show that they are within the notification area. They concurred to not hear any of the anonymous caller's opinions on future cases.

There being no further business, the meeting was adjourned at 5:58 p.m.

hmg